IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

MONDAY, THE 16TH JULY 2007 / 25TH ASHADHA 1929

Crl.MC.No. 1517 of 2007()

SC.223/2000 of SPL.COURT (NDPS ACT CASES), VADAKARA

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PETITIONER:

T.J.JAISON,S/O.JOSE,
CONVICT NO.7086,
CENTRAL PRISON,
KANNUR.

BY ADV. SRI.C.T.JESTIN, STATE BRIEF

RESPONDENTS:

STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.M.S.BREEZ

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 16/07/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

Crl.M.C.No.1517 of 2007

Dated this the 16th day of July, 2007

O R D E R

The short grievance of the petitioner is that he is not being given the set off to which he is legally entitled in Sessions Case No.223 of 2000, which was disposed of by the learned Special Judge, N.D.P.S Act Cases) Vadakara by judgment dated 17.1.01.

2. The petitioner has been found guilty, convicted and sentenced in another case under the N.D.P.S Act ie. S.C.61 of 2000 of the same court. He has to undergo imprisonment for a period of 10 years and 6 months in that case. He was found guilty, convicted and sentenced in that case on 17.06.2000. He is now serving the sentence in that case. He will have to be in prison till the year 2010 to serve the said sentence.

3. During the pendency of the trial in S.C.No.61 of 2000, S.C.No.223 of 2000 was also taken up for trial. The petitioner was found guilty, convicted and sentenced to undergo imprisonment for a period of one year. The petitioner has been given set off for the period 24.02.2000 to 16.06.2000 only.

4. According to the petitioner, he is entitled for set off for the period 24.02.2000 to 17.01.2001 and not till 16.06.2000 only, which alone has been granted now. A report of the learned Special Judge

was called for. The report shows that the petitioner was detained pending disposal of S.C.No.223 of 2000 from 24.02.2000 to 17.01.2001. But the set off was granted to a limited period of 24.02.2000 to 16.06.2000 for the reason that from 17.06.2000, the petitioner is undergoing imprisonment as per the substantive sentence of imprisonment imposed in S.C.61 of 2000.

5. This Crl.M.C has been registered on the basis of a petition filed by the prisoner in custody through the prison authorities. Services of a State Brief counsel was made available to the petitioner. The learned counsel submits that in the light of the decision of the Supreme Court in **State of Maharashtra v. Najakat Alie Mubarak Ali** [2001(6) SCC 311], the petitioner is entitled for set off for the entire period during which he was in custody pending investigation/trial notwithstanding the fact that he was detained in custody as a convict in another case also during the same period.

6. I find merit in the contention of the learned counsel for the petitioner. In the light of the decision in **State of Maharashtra v. Najakat Alie Mubarak Ali** (supra), the petitioner is entitled for set off for the entire period of 24.02.2000 to 17.01.2001, during which was in custody pending trial in S.C.No.223 of 2000.

7. This Crl.M.C is accordingly allowed. The learned Special Judge (N.D.P.S Act Cases) Vadakara shall recall the warrant of

commitment and issue revised warrant specifying therein that the petitioner is entitled for set off for the entire period of 24.02.2000 to 17.01.2001. Communicate the order to the prisoner and prison authorities forthwith.

(R.BASANT, JUDGE)

rtr/-